

PART 19—SMALL BUSINESS PROGRAMS

19.307 [Amended]

3. Amend section 19.307 by removing paragraph (a)(2); by redesignating paragraph (a)(3) as (a)(2); in the newly designated paragraph (a)(2) by removing "Alternate II" and adding "Alternate I" in its place; and in paragraph (c) by removing "and contracts".

4. Revise section 19.1302 to read as follows:

19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-3 by revising the date of the provision; by adding paragraph (c)(10); by revising the introductory text of Alternate I; by redesignating paragraph (c)(10) of Alternate I as (c)(11); and by removing Alternate III. The revised and added text reads as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Apr 2002)

* * * * *

(c) * * *

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It [] is, [] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [] is, [] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating on the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

Alternate I (Apr 2002). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

* * * * *

6. Amend section 52.219-1 by revising the date of the provision; by adding paragraph (b)(6); by removing Alternate I and redesignating Alternate II as Alternate I; and by revising the introductory text of the newly designated Alternate I to read as follows:

52.219-1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Apr 2002)

* * * * *

(b) * * *

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It [] is, [] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [] is, [] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

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Alternate I (Apr 2002). As prescribed in 19.307(a)(2), add the following paragraph (b)(7) to the basic provision:

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[FR Doc. 02-5825 Filed 3-19-02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001-06; FAR Case 1999-612; Item VII]

RIN 9000-A195

Federal Acquisition Regulation; Application of Labor Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the clause, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), to clarify the application of labor clauses below the simplified acquisition threshold. The Councils also revised the Equal Opportunity clause to incorporate the exception for work performed outside the United States.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-06, FAR case 1999-612.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule—
1. Moves the Prohibition of Segregated Facilities clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213-4 and clarifies the existing requirements of 41 CFR 60-1.8, promulgated by the Department of Labor under E.O. 11246. The Prohibition of Segregated Facilities clause must be included in contracts whenever the Equal Opportunity clause (FAR 52.222-26) is included.

2. Moves the Equal Opportunity clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213-4 because the clause must be included in almost all contracts, even those under \$10,000, in accordance with the requirements at FAR 22.802(a)(1)

and 22.807(b). Even though included, the clause is inapplicable unless the aggregate value of contracts and subcontracts awarded to the contractor exceeds \$10,000 in a year.

3. Makes other revisions to paragraphs (b)(1)(i), (b)(1)(v), and (b)(1)(vii) of the clause at FAR 52.213-4, and paragraph (a) of the clause at FAR 52.222-26, relating to geographic applicability of labor clauses, to comply with the current regulations at FAR 22.603, 22.807(b)(2), 22.1001, 22.1003-2, and 22.1408(a)(1).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 64298, October 26, 2000. Two respondents submitted public comments. One respondent is in favor of the rule, while the other commenter believes the 52.222-36 clause change creates a double standard, strongly favoring Americans, while making non-Americans working outside the United States susceptible to abuses by contractors. The Councils believe that the comment is outside the scope of the rule. The clause at 52.222-36 does not apply to employees recruited outside the United States for work performed outside the United States. This has been in the FAR since this FAR subpart was written in 1984. It is in the Department of Labor regulation which is the source of the FAR subpart (see 41 CFR 60-741.4(a)(4)). The concept is that the country in which the work is performed has the sovereignty to write its own laws regarding affirmative action of those disabled workers. This case confirms that this long-standing exception applies to items whether commercial or noncommercial. Accordingly, the comments resulted in no change to the rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only clarifies the existing requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.213-4 by—
 - a. Revising the date of the clause;
 - b. Redesignating paragraphs (a)(1)(ii) and (a)(1)(iii) as (a)(1)(iv) and (a)(1)(v), respectively, and adding new paragraphs (a)(1)(ii) and (a)(1)(iii);
 - c. Removing paragraphs (b)(1)(ii) and (b)(1)(iii), and redesignating paragraphs (b)(1)(iv) through (b)(1)(xiii) as (b)(1)(ii) through (b)(1)(xi), respectively; and
 - d. Revising paragraph (b)(1)(i) and newly designated paragraphs (b)(1)(iii) and (b)(1)(v).

The added and revised text reads as follows:

52.213-4 Terms and Conditions Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Apr 2002)

- (a) * * *
- (1) * * *
- (ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).
- (iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

* * * * *

- (b) * * *
- (1)
 - (i) 52.222-20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

* * * * *

- (iii) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana

Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

* * * * *

(v) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

* * * * *

3. Amend section 52.222-26 by—
 - a. Revising the date of the clause;
 - b. Removing the paragraph designation and the introductory text of paragraph (b);
 - c. Redesignating paragraph (a) as paragraph (b) and revising the introductory text; and
 - d. Adding a new paragraph (a).
 The added and revised text reads as follows:

52.222-26 Equal Opportunity.

* * * * *

Equal Opportunity (Apr 2002)

(a) *Definition.* *United States*, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 6, 9, 31, and 52

[FAC 2001-06; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).